

*[Music]*

*David Brinkley:* Whether or not Oswald could, I don't know that it would prove much \_\_\_\_.

*Moderator:* That's all right. I think we'll just open with that. That of course is David Brinkley. Another one of my guests is Father Hartke, who is head of the speech and drama department at Catholic University. And Sidney Zagri, who's author of *Free Press, Free Trial – Fair Trial*. And that's the point of contention here. I hope you have very few distractions for the next 45 minutes, because our participants today are very much interested in this very thing, free press and free – is it fair trial? All right.

So, our conversation's going to begin right after this message.

*[Music]*

*[Commercial]*

*Moderator:* Mr. Zagri, before we discuss your book, I'd like you to give us a little bit of your background, please, and what you're doing right now.

*Sidney Zagri:* I'm legislative counsel for the International Brotherhood of Teamsters. I went to Harvard Law School and University of Wisconsin, and I've been working as director of DRIVE, which is our political arm, and also legislative counsel for the International for the last seven years.

*Moderator:* May I ask what prompted this particular book?

*Sidney Zagri:* It was – it was prompted really by a publisher, Charles Hollberg. I testified before Sam Irwin's subcommittee on constitutional rights about two years ago on the question of whether or not Senator Morse's bill should be adopted, and he asked me, would you mind if we made a book out of your testimony? I said, delighted, go right ahead. And so that's how the book came into being. I had very little more to do with it.

*Moderator:* Was it subsidized by the Teamsters union?

*Sidney Zagri:* Absolutely not. As a matter of fact, we had at Mr. Hoffa's specific instructions, we will not spend one nickel either in terms of purchasing the book or in subsidizing or guaranteeing the book. However, we – insofar as my royalties are concerned, I have also

signed over my royalties to DRIVE, which is our political arm, so that I cannot profit by it, either.

*Moderator:* All right. Now you and Mr. Brinkley were having a discussion about influences on juries. Will you state your position, please? And if you'd like to be specific about the Hoffa trial, fine, or generally.

*Sidney Zagri:* Well, I think that juries should be impartial. Obviously, we can't have a fair trial without impartial juries.

*Moderator:* Right.

*Sidney Zagri:* And juries are protected by the rules of evidence, and the courts have built up great confidence in our legal system by a selective process of eliminating extraneous evidence, like hearsay, opinion evidence, past criminal records, from the attention of juries, so that they can judge a specific case impartially on the facts presented in that case.

Now in the Hoffa case, of course, we have a situation where Mr. Hoffa was before the McClellan committee on 48 different occasions, probably the most interrogated witness in the history of these United States, during this period of two years, and he was on television through the great majority of this period. Bobby Kennedy, who was then general counsel to the committee –

*Moderator:* Well, I say to that, so what?

*Sidney Zagri:* Well, let me finish, and I'll tell you. Paul Jacobs has a good answer to this. He – in his special study on the extracurricular activities of the McClellan committee, he points out that as a result of these investigations and hearings, Mr. Hoffa was judged by the American public based on testimony of ex-cons, dope addicts, people who hoped they get out of jail in order to – if they testified to certain things.

At the same time, Mr. Hoffa did not have the right to counsel, did not have the right to cross-examine witnesses, did not have the right to present his own witnesses in rebuttal to this testimony, nor was the usual rules of evidence, which would exclude irrelevant testimony, were not applicable to a Congressional hearing. As a result of this –

*David Brinkley:* He had a lawyer in the Congressional hearing.

- Sidney Zagri:* Yes, but he could not – the lawyer could not object.
- David Brinkley:* Well, you said he didn't have the right to counsel.
- Sidney Zagri:* He did not – he did not have the right to counsel.
- David Brinkley:* Well, the counsel was there.
- Sidney Zagri:* Well, he was there only for one reason. If Mr. Hoffa had a question as to whether or not he would involve himself, implicate himself, he could ask him that question. But the normal function of a counsel was not available, in other words –
- David Brinkley:* Even the right to cross-examine was –
- Sidney Zagri:* Not only that, but it was not available in terms of objecting to certain rulings of the chair and objecting to certain questions that were asked by the prosecutor. The normal function of a counsel was not permissible in the McClellan hearings.
- As a result of this, Paul Jacobs points out that after 2 years, 48 of these so-called public trials, and of course, according to Justice Douglas, these public trials are – you can become convicted on this irrelevant type of testimony in the eyes of the American public, just as real as you would in a court of law.
- Moderator:* Get to Paul Jacobs. What did he say?
- Sidney Zagri:* Well, Paul Jacobs said that after two years of this, when Mr. Hoffa traveled on a plane, and it was rumored that he was on the plane, even some men who had come out of the cockpit to look upon this man as an example of evil strength. They had no idea about the man personally, but this was the image that was created.
- When Senator McClellan appeared on I think *All America What's New* on ABC, he was – he waved his book to the television audience, and it was *Crime Without Punishment*.
- Moderator:* I don't know what point you're making to me.
- Sidney Zagri:* And Senator McClellan – the point I'm making is this.
- David Brinkley:* What do you want to do? Ban Congressional investigations?
- Sidney Zagri:* No, of course not, and I don't want to abolish a free press, either, because I –

*[Crosstalk]*

*Sidney Zagri:* A free press and free television is vital to this republic. The people have a right to be informed. And people have a right to a fair trial. And we have these competing rights, the First Amendment right and a Sixth Amendment right. And in my book, I discuss the problem of reconciling these two basic rights.

*Moderator:* Father Hartke?

*Father Hartke:* Why did you presume that they came out to look out at him as an example of evil? Because, you see, the curiosity is one of the strongest motives we have, and if it's Marlon Brando or Gregory Peck, any figure in the public, you know – do you really believe that they thought they were looking at the man who's consummate evil?

*Sidney Zagri:* I didn't –

*Father Hartke:* Or just curious to see a public figure?

*Sidney Zagri:* I did not –

*[Crosstalk]*

*David Brinkley:* Has he just become a celebrity?

*Sidney Zagri:* No, I did not – I did not make this observation.

*[Crosstalk]*

*Moderator:* Yeah, but you quoted it as support for your attitude.

*[Crosstalk]*

*Sidney Zagri:* Yes. All right. Let me quote you directly, and he gives you his reasons. Jacobs' observation on this point is significant. By the time Hoffa had completed the first of his numerous appearances before the committee, millions of TV screens and newspaper photos had made him so notorious that even the crews on the planes he flew would leave the cockpit to stare at him, fascinated by the aura of evil strength that he had had projected around him.

*Father Hartke:* That's a presumption –

*[Crosstalk]*

*Moderator:* It's a presumption indeed—

*David Brinkley:* How do you know why they are fascinated by him? They might have simply wanted to see a celebrity. Come back and look at \_\_\_\_\_ —

*[Crosstalk]*

*Sidney Zagri:* This is — I agree with you. This is Paul Jacobs' subjective evaluation of his experience.

*David Brinkley:* Well, he's not here, so why don't you tell us what you think?

*Moderator:* Yeah. You think. What do you think?

*Sidney Zagri:* All right. What I think is this. I think that the average person knows only what he reads in newspapers and what he sees on TV and hears on radio. He doesn't know the facts behind. Now when a man appears on 48 different television appearances, and the public only gets a one-sided view which is presented —

*Moderator:* What do you mean one-sided?

*Sidney Zagri:* Because Mr. Hoffa did not have the right of cross-examination. He did not have the right to present his own witnesses. He didn't have the right to counsel in the traditional sense. Irrelevant testimony was permitted because the ordinary rules of evidence was not applicable. And the caliber of the witnesses, the credibility of the witnesses, were never challenged. So if he never had any of these normal rights according to Anglo-Saxon jurisprudence, it was one-sided.

*David Brinkley:* Well, now, wait a minute, Sidney.

*Moderator:* Yes.

*David Brinkley:* Hoffa was in the chair quite a long time.

*Sidney Zagri:* Right.

*David Brinkley:* He was able to say whatever he wanted to say, in his own defense—

*Sidney Zagri:* Oh, no, he could not. He could only answer the questions that were asked him. That's the point I'm making.

*David Brinkley:* Well, he managed – look, I saw all those hearings, and I – if there is a guilty party here, I'm it, because I put them on the air, quite a lot. And Hoffa managed to say a great deal. It is not – you are not required in a Congressional committee to respond with a yes or no answer to a question. You can make speeches. In fact, he did. He did present some of his own witnesses. And I'll recall a specific occasion to your mind. A long series of questions, Hoffa said, well, I can't answer that. If you will put on – one of his vice presidents, I've forgotten his name – ask him. So they put the vice president on, and he took the 5th amendment. So what is that, but putting on your own witnesses?

*Sidney Zagri:* No, no, no. That is not putting on your own witness. When you put on your witness, your witness has the privilege of rebutting testimony presented by the prosecution.

*David Brinkley:* Well, this vice president could have rebutted it, had he wanted to or been able to.

*Sidney Zagri:* No. If I – I don't know the case you're referring to, but on the basis of the facts you give me, Mr. Hoffa simply said, I don't remember the question, the answer to the question. Maybe someone else can give you those facts. That's all he – the vice president had a right to respond to.

And this is exactly my point, David. If the individual can only respond to specific questions, he cannot put on the evidence necessary to rebut those questions.

*David Brinkley:* Yes, but he did a great deal more than \_\_\_\_\_ questions.

*[Crosstalk]*

*Sidney Zagri:* And I'll give you an example.

*Moderator:* Wait a minute. Wait a minute.

*Sidney Zagri:* Let me give you an example.

*Moderator:* No, I want you to wait a minute, because David has a point here.

*Sidney Zagri:* I see his point, and I want to –

*David Brinkley:* He was not confined to yes or no answers. You can, and in fact he did, make long speeches and long statements.

*Sidney Zagri:* Well, give me a specific example of what you are referring to.

*David Brinkley:* You mean a specific speech?

*Sidney Zagri:* No, a specific question and answer, so we can get into the problem specifically.

*David Brinkley:* Well, I can't give you a specific question –

*Sidney Zagri:* Well, this is very important.

*David Brinkley:* – now because it's been several years ago, and –

[Crosstalk]

*Sidney Zagri:* I'll give you a hypothetical one, and I think you'll see my point.

*Moderator:* Well, he just did. He said about putting the vice president on the stand.

*Sidney Zagri:* No. No, he did not.

*David Brinkley:* Well, I think, as I recall, it was something about union records and union money, and Hoffa said he didn't remember, but he suggested they put on a vice president of the Teamsters union and let him answer the question. They did, and the vice president took the 5th amendment.

*Sidney Zagri:* No, as far –

*David Brinkley:* Do you remember that? Do you remember that?

*Sidney Zagri:* I actually – I got here in '59, and the hearings began in '57. However, again, you simply reinforced the point I'm making. You are saying that Hoffa had the right to answer a question. I don't deny this. Of course he had the right to answer the question. My point is that he did not have a right to put on his witnesses to rebut the testimony of the witnesses of the government.

For example, the very opening hearing of the McClellan Committee brought in certain witnesses from Portland, Oregon. One happened to be a vice lord in charge of narcotics and prostitution. Another was a prostitute. A third was a dope addict.

These three witnesses testified against Clyde Crosby, who was our international organizer from Portland. According to their testimony, the mayor of Portland and Clyde Crosby were in a conspiracy to establish their own domination, political domination, the vice domination, of the City of Portland.

However, when the rules of evidence were applied in a court of law, the vice lord and his dope addict and his prostitute were convicted and sent to jail. The mayor of Portland and Clyde Crosby were tried and were acquitted. But in the eyes of public opinion, in the eyes of public opinion before the McClellan committee, we had a situation where only the position of the McClellan Committee, which was the position of the vice lord and the dope addict, was made known, because the – Clyde Crosby could not present his witnesses to rebut the testimony.

*David Brinkley:* He could deny the charges –

*Sidney Zagri:* Oh, yes, but –

*David Brinkley:* – and then could be –

*Sidney Zagri:* But he's an interested party.

*David Brinkley:* He could be indicted for perjury if it could be established he was wrong, if he was lying.

*Sidney Zagri:* That's, again, a defensive – that's a defensive right, not an affirmative right. There's a difference. I'm saying he did not have the affirmative right to establish his position through his own witnesses.

*David Brinkley:* Well, I daresay that a witness before a Senate committee, and I've seen a lot of them, for 20 odd years, if he said, I have a witness I would like to put on the stand to tell my side of the story or whatever, it would be granted.

*Sidney Zagri:* Can you give me one example?

*David Brinkley:* Well, I can't give you – no, I can't. In the Hoffa case, I can't.

*Sidney Zagri:* Can you give me one example before another Congressional committee –

*David Brinkley:* Well, yes, I –



*Sidney Zagri:* The Crosby hearings, for example?

*David Brinkley:* I have often seen them. Yes.

*Sidney Zagri:* Give me one example.

*David Brinkley:* Do you think a committee as a political reality could deny that to a witness –

*Sidney Zagri:* Yes.

*David Brinkley:* – who was on television?

*Sidney Zagri:* As a matter of fact –

*David Brinkley:* Well, I don't think so.

*Sidney Zagri:* – as a – all right. I refer you now, because I've been in the middle of this fight now for almost ten years –

*[Crosstalk]*

*David Brinkley:* Well, let me interrupt. What is the fight?

*Moderator:* Just a moment.

*David Brinkley:* What is the fight?

*[Crosstalk]*

*Sidney Zagri:* The fight is this.

*David Brinkley:* What are you fighting for? What do you want?

*Sidney Zagri:* We're fighting – we're fighting for due process.

*David Brinkley:* In the Congressional hearings?

*Sidney Zagri:* In Congressional hearings and also due process as far as any other hearings are concerned. But we're talking about Congressional hearings now. And the –

*David Brinkley:* You want to make it into a trial?

*Sidney Zagri:* No, not \_\_\_\_\_ trial exactly, because –

- David Brinkley:* With rule of courtroom evidence?
- Sidney Zagri:* Yeah, I think that if you have rules of courtroom evidence, we – there should be a little more latitude than strict courtroom evidence, but on the other hand, I think that there should be the right to cross-examination, and there should be the right to present your own witnesses. There should be the right to counsel. These are basic rights of due process under the 6th amendment.
- David Brinkley:* All right. Suppose we all agree to that. Then what is there to argue about?
- Sidney Zagri:* Well, if we do –
- David Brinkley:* We're talking about Jimmy Hoffa.
- Sidney Zagri:* All right. No, I'm saying that in the Hoffa case, he didn't have those rights. And during the same period of 48 – in these 48 appearances over a 65-day period, and hundreds of thousands of pages of testimony, and TV, we find that during this period, Hoffa was on trial simultaneously in two specific cases where he was a defendant. He was also being investigated by 27 grand juries around the country, and these members of the petit juries and the grand juries were part of this vast TV audience across these United States.
- And I'm saying that if a defendant is going to be subjected to this type of public exposure, the very minimum he should have is due process protection. Would you disagree with that?
- David Brinkley:* No, I think he should have the right to cross-examine witnesses and put on his own witnesses, and should have the right to question witnesses against him.
- Sidney Zagri:* Right. And this is –
- David Brinkley:* I won't argue that.
- Sidney Zagri:* – he didn't have this.
- David Brinkley:* Well, nobody does. It's not a trial.
- Sidney Zagri:* Well, the point I'm making is –
- David Brinkley:* I think they should.

*Sidney Zagri:* That's right.

*David Brinkley:* But it's not a trial. Nobody's liberty or property or life is at stake.

*Sidney Zagri:* Let me – let me quote –

*David Brinkley:* It's not a trial.

*Sidney Zagri:* – Justice Douglas of the Supreme Court, in which he says –

*Moderator:* Sidney, while you're finding that, could I go to commercial for you?

*Sidney Zagri:* Sure.

[Commercial]

*Moderator:* In the event that you are just joining us, we are talking with David Brinkley – one hesitates to do anything parenthetical about David Brinkley. I just think he's the top newsman in – all right, David, blush \_\_\_\_\_ – in the world. And Father Hartke, who is head of the speech and drama department of Catholic University. And Sidney Zagri, author of *Free Press*, *Fair Trial*.

Now, gentlemen, I think David had a response to you.

*Sidney Zagri:* No, I was just going to quote Justice Douglas.

*Moderator:* All right.

*David Brinkley:* Go ahead.

*Moderator:* Go ahead.

*Sidney Zagri:* All right. Justice Douglas of the Supreme Court states that television trial may produce evidence to convict the witness, and it may saturate the country with prejudices against the accused that a fair trial may be next to impossible. And that's exactly my point.

*David Brinkley:* Do you say that's what was done to Jimmy Hoffa?

*Sidney Zagri:* I say it's exactly what was done. And let me give you a specific example of this. During the McClellan hearings, Hoffa was on trial in Orlando. He asked for a continuance of the McClellan hearing, because he said the testimony –

*David Brinkley:* Wasn't he acquitted in Orlando?

*Sidney Zagri:* No, it never came to trial. Never came to trial. Matter of fact, later, the Orlando trial was dropped, and they merged it with another case. But Hoffa was on trial in Orlando. He asked for a continuance before the McClellan hearings, his lawyer did, Edward Bennett Williams, before the committee, asked for a continuance on the grounds that testimony before the television audience at that time would be prejudicial to his trial in Orlando. The McClellan committee denied him a continuance. And any court of law would have granted a continuance or a change of venue or something to ensure some degree of impartiality. This is the kind of thing I'm talking about.

*David Brinkley:* So what do you suggest? What do you suggest?

*Sidney Zagri:* Well, we – first of all, I say that if we are going to have Congressional hearings, we should have hearings that observe due process along the lines we've just discussed, right to confront your accuser, the right to cross-examine, right to counsel, right to present your own witnesses.

If there is a close correlation timewise between the Congressional hearing and a trial in a court of law, a continuance should be granted in one case or the other, so that there will be at least a time gap to whatever prejudice might have been created by extraneous witnesses, extraneous testimony, or by passions created, after all a Congressional hearing is a political affair. Everyone is vying for TV coverage –

*Moderator:* All right, Sidney –

*Sidney Zagri:* – and so on.

*David Brinkley:* Jimmy Hoffa is a political figure.

*Moderator:* He certainly is. Now aside from that, one of your contentions in this book is about the press. I'm talking about the news media.

*Sidney Zagri:* Right. The mass media.

*Moderator:* All right. Now what would you have us do? How would you like this covered?

*Sidney Zagri:* I'd like to have you cover and get your hands on every piece of news you are capable of getting your hands on. In other words, I'm

not for the English system. I don't believe that – in fact, whether I am or not is irrelevant, because under the 1st amendment, the courts have found that the English system which would cite the press for criminal contempt for commenting on matters that are not in evidence would be unconstitutional.

*Moderator:* Couldn't Mr. Hoffa sue if the news media vilified him in any way? Couldn't he sue for libel?

*Sidney Zagri:* Well, this is not a question of libel.

*Moderator:* What is it?

*Sidney Zagri:* It's a question of presenting evidence in the press that could not be presented in the court of law. The – our courts, our judiciary, has built a certain respect in our free society because of the method of selecting the relevant from the irrelevant. Now there are many things that appear in the press that could never get past a judge because the judge would simply say, this is not relevant to the particular case.

For example, is a defendant is before his – is brought to trial, he cannot be – his past criminal record cannot be gone into.

*Moderator:* Give me a definitive answer, Sidney. What would you have the news media do, please? Definitive answer now.

*Sidney Zagri:* All right. Number one, I am – I'm a supporter of the – of S290, which is the Morse Bill, and co-sponsored by 14 Senators.

*Moderator:* Right. We'll get to that in a moment.

*Sidney Zagri:* All right. But this is what I would propose. I would simply suggest that we give the press the same freedom to comment as it has today. The Morse bill would not interfere with your freedom to comment or freedom to inform. But I would –

*David Brinkley:* That's awfully nice of Senator Morse.

*Sidney Zagri:* Oh, well, this is – but this is \_\_\_\_\_ our Constitution, because this is our 1st amendment right.

*David Brinkley:* Right. And so –

*Sidney Zagri:* All right. But on the other hand –

*David Brinkley:* – we appreciate the favor of –

*Sidney Zagri:* It's not a favor. It's a matter of –

*David Brinkley:* Well, I'm being –

*Sidney Zagri:* Yes, I know that. But it would, however, limit leaks to the press. It would limit leaks to – not only leaks, but it would limit outright publicity releases.

*Moderator:* Now how in the world are you going to control leaks? Who is so omnipotent that they are going to say who – what is a leak and what is not? Now –

*Sidney Zagri:* Well, I'll give you – let me give you a good example.

*Moderator:* All right.

*Sidney Zagri:* First, let's take the obvious case.

*Moderator:* All right.

*Sidney Zagri:* Which is –

*David Brinkley:* You know, there are leaks on both sides, Sidney. There are leaks from the defense –

*Sidney Zagri:* And this is \_\_\_\_.

*David Brinkley:* – and leaks from the prosecution. Do you want us to – do you want to stop them both?

*Sidney Zagri:* Absolutely.

*David Brinkley:* Okay.

*Sidney Zagri:* I think the defendant would be foolish –

*David Brinkley:* I wish you luck.

*Sidney Zagri:* – would be foolish not to buy this, because –

*Moderator:* That's not realistic, though, is it, Sidney?

*Sidney Zagri:* Why isn't it?

*Moderator:* To stop leaks to the press on both sides?

*Sidney Zagri:* I think it is realistic.

*Moderator:* How in the world can you do that?

*Sidney Zagri:* Well, first of all, let's take the obvious case, which is your press release, which is slanted.

*Moderator:* Oh, really?

*Sidney Zagri:* Yes.

*Moderator:* Who says so?

*Sidney Zagri:* Well, I say so. And I'll tell you why I say so.

*Moderator:* Well, I say it's not.

*Sidney Zagri:* Well, let me give you – may I give you an example?

*Moderator:* All right.

*Sidney Zagri:* All right. Now the – in each one of the Hoffa cases, the Department of Justice issued a press release which summarized the basis for the indictment. In the Chicago trial, the press release referred to the fact that \$20 million had been manipulated, and over \$1 million was diverted by the defendants in the case, and headlines all over the country just prior to Hoffa going to trial in Chattanooga was, defendant Hoffa and cronies divert \$1 million from fund. This was the headline also in the *Chicago Sun*.

*Moderator:* Okay.

*David Brinkley:* Well, that's what he was charged with.

*Sidney Zagri:* I understand that. Now the interesting thing was that during the trial, the defense counsel offered to show that not only was there no diversion, that not one nickel had been diverted, but that the fund would be \$14 million richer when the loans matured. The prosecutor objected and said this was irrelevant because the indictment, the charge was not that the matter – that this money was diverted, but that there was a scheme to defraud.

In the meantime, the jurors, the potential jurors, had read this headline, which said charged, there was a diversion of funds. Now

the government comes along in the trial and says, we didn't charge no such thing. We simply charged that there was a scheme to defraud. But there had been very – subtly been planted in the minds of the potential juror that these were crooks, you see.

*David Brinkley:* Well, if not, why couldn't they prove it in the courtroom to the jury's satisfaction, and if to the judge's satisfaction, he could have directed a verdict of not guilty.

*Sidney Zagri:* Well, the jury –

*David Brinkley:* But he didn't.

*Sidney Zagri:* The jury – well, as a matter of fact, he couldn't direct a verdict of not guilty because the indictment simply said there was a question of whether there was a conspiracy, not the question of whether there was in fact a diversion. See? What I'm saying is that the indictment – I'm saying that the press release was a misstatement of fact.

*David Brinkley:* Well, do you think the jury was influenced by it?

*Sidney Zagri:* Of course. Of course I do.

*David Brinkley:* Well, that's only your opinion. Do you have any facts to support your opinion?

*Sidney Zagri:* Yes, and I – but I can't go into it in this broadcast for one reason. The case is now pending. But in the – in the brief, there is affidavits on all this.

*Moderator:* But you have proof?

*Sidney Zagri:* Oh, yes. Absolutely.

*David Brinkley:* The jury was –

*Father Hartke:* That they were influenced by the –

*Sidney Zagri:* There is – there's affidavits on this. Absolutely. But I don't want to get into it, because it would be improper for me to get into a pending case.

*David Brinkley:* Well, there's a new book out, Sidney, which I recommend to you, in which two sociologists, lawyers, I've forgotten which they are, did a thorough study of about 100 court cases, interviewed all the



jurors, studied all the evidence, interviewed the judges, and found that in almost all cases, jurors make their decisions on the basis of what they had heard in the courtroom, and not on the basis of what they might have heard or read before the trial started. In other words, the American people, generally speaking, are fair-minded. They will do what the judge asks them to do, which is to listen to the evidence, discard whatever else may be in their minds, and to make their – deliver a verdict on the basis of the evidence heard in the courtroom. And the study shows that they do.

And I'm very dubious about the charge constantly made that jurors are influenced by what they read in the paper before the trial started, or heard on television, or heard on the radio. I just don't think it's true. I think when people are asked to be fair, they make a great effort to be fair. They take their duties as jurors seriously and try to be honest and try to be fair.

*Sidney Zagri:* Well, there's no argument about the desire of people to be fair. But let me quote to you from –

*[Crosstalk]*

*David Brinkley:* Well, if you weren't arguing that, if you weren't arguing that, you wouldn't say their verdicts would be influenced by what they heard before the trial started. You must be saying that they're not willing to be fair.

*Sidney Zagri:* No, I'm not saying that.

*David Brinkley:* Because they're carefully told in every trial by every judge, discard from your mind whatever prior opinions you may have.

*Sidney Zagri:* That's exactly true.

*David Brinkley:* And decide precisely on the basis of what you hear in the courtroom, and nothing else.

*Sidney Zagri:* That's exactly true.

*David Brinkley:* So if they don't do that, they're not being fair.

*Sidney Zagri:* Yeah. But on the other hand, people are influenced by many factors at the unconscious level. And once a guilt image has been created, that individual, whether he is aware of it or not, is influenced by it.

*Moderator:* How can you prove that that image has been implanted? How can you prove that a guilt image has been implanted? I think you presume so much, Sidney.

*Sidney Zagri:* I don't think I presume. I'm taking objective people who have –

*Moderator:* Now you're –

*Sidney Zagri:* I'm an advocate. I grant you that.

*Moderator:* Yes. Please grant us that.

*Sidney Zagri:* But I'm taking – but I – well, I don't have to, but I will. On the other hand, I'm taking objective people like people from The Fund for the Republic, the Institutional Democratic Studies, who are financed by the Ford Foundation, and they have no interest in the case one way or the other. And after a thorough –

*David Brinkley:* And what do they say?

*Sidney Zagri:* And they – and Paul Jacobs –

*Moderator:* And what did they say?

*Sidney Zagri:* Paul Jacobs, and I quoted you just a moment ago what he said, that a guilt image –

*Moderator:* I want you to quote the fund – I know Paul Jacobs very well.

*Sidney Zagri:* And he has –

*Moderator:* I know the side of the fence that he's on, too, by the way.

*Sidney Zagri:* And which side is that?

*Moderator:* He's very pro-labor, extremely pro-labor.

*Sidney Zagri:* Have you seen his recent book on the need for –

*Moderator:* And I think if anyone could be influenced –

*Sidney Zagri:* Yes.

*Moderator:* – that Mr. Jacobs has been influenced.

*Sidney Zagri:* In favor of Mr. Hoffa?

*Moderator:* Are both of you pure? You have not been influenced by your labor associations? You say jurors have but you have not?

*Sidney Zagri:* I'm not saying that at all. All I'm saying is that if I were a member of the jury, I would prefer to be free of influence by pre-trial publicity. That's all I'm saying. We're all influenced – there is no such thing as a human being that isn't – that is not influenced by the environment in which he finds himself.

*Moderator:* Then what are you going to do about jurors?

*Sidney Zagri:* Well, I'd like to afford them the protection that a court of law affords them, namely this, that there shall be no commenting on evidence that is not before the court. If there is commenting in advance of the trial, then the jury no longer is free to really see this thing on an impartial basis.

For example, we have –

*David Brinkley:* You want to stop the press, television, radio – when I say press, I include all of us –

*Sidney Zagri:* No, I don't want –

*David Brinkley:* – from commenting on cases before or about to come before –

*Sidney Zagri:* This is English law. No, this is English law.

*David Brinkley:* Yes, I know \_\_\_\_\_ –

*Sidney Zagri:* And I'm not saying that.

*David Brinkley:* Then what are you saying?

*Sidney Zagri:* I'm saying that we – that under the Morse Bill, we would simply require that the attorney for the defense or attorney – or the prosecution be permitted to provide the press with information that is not in evidence, so that –

*Moderator:* It's curious that it's so one-sided, isn't it? That the press is so influenced on one side.

*Sidney Zagri:* Which side?

- Moderator:* You'd think that if – if everything you're saying is true, that they would be influenced one way or the other. There would be some kind of objectivity.
- Sidney Zagri:* Well, let me give you a specific example.
- Moderator:* But you paint a very black picture, it seems to me.
- Sidney Zagri:* No, it's not a black picture. It's a black picture insofar as the facts make it black. But I think that we have –
- Moderator:* Depending upon whose facts.
- Sidney Zagri:* Well –
- David Brinkley:* These leaks to the press, again, Sidney, come from both sides. The defense and the prosecution.
- Sidney Zagri:* Well, I – all right. Let me give you a situation that nobody will contest on the facts, because –
- Moderator:* Sidney, dear, before you do that, could I give you one that's comparable to it on the commercial side?
- Sidney Zagri:* Oh, sure.
- Moderator:* Here comes a little puzzle.
- [Commercial]*
- Moderator:* In the event that you are just joining us, I'm very sorry. You have missed a good 40 minute discussion, and we have just a few minutes to go. We've been talking with Father Gilbert Hartke, head of the speech and drama department of Catholic University, and David Brinkley –
- Father Hartke:* Yeah.
- Moderator:* – television's top newsman.
- David Brinkley:* You haven't had much to say, Gil. I think we should –
- Moderator:* And Sidney Zagri, author of *Free Press and Fair Trial*.
- David Brinkley:* Yeah.

*Moderator:* Father Hartke –

*David Brinkley:* Gil, will you say something –

*[Crosstalk]*

*Father Hartke:* I will say my silence is golden insofar as it's gold for the people, that you keep your mouth shut and you listen, because you two are experts in the field, and I'm fascinated. And this book should be *Free Press, Fair Trial, and Free Swinging*. That should be – it's been very good. I did want to get an elbow in there edgewise, but I didn't quite succeed. Carry on. It's great.

*David Brinkley:* Why don't you get it in now?

*Moderator:* Do it now, Father. You may not have another opportunity.

*[Crosstalk]*

*Father Hartke:* Well, I was concerned why the – you were giving testimony, and so a man is present when you're giving testimony. This man says, Sidney Zagri, I want to publish that. See, I'm just wondering if he –

*Sidney Zagri:* He wasn't present.

*Father Hartke:* He wasn't present?

*Sidney Zagri:* No. No.

*David Brinkley:* I see.

*Father Hartke:* Well, let me get him out of being present. When he sees it – sees you in the communication media, to get the point across that this is unfair to this man you're talking about – in other words, he is using the testimony that he hears to make a white case for what you consider being a black case.

*[Crosstalk]*

*Sidney Zagri:* Can I \_\_\_\_\_ book here for a moment?

*Father Hartke:* And I'm curious about why the man did this, why the man wanted to take this, because –

*[Crosstalk]*

*Sidney Zagri:* Charles Hollberg is a relative – is a relatively new publishing field, and he's taken a number of controversial subjects, some of them on the labor side, some of them quite on the right-wing side, as a matter of fact.

*[Crosstalk]*

*Sidney Zagri:* And he is looking for controversial subjects I think in order to make a name for his company.

*Father Hartke:* Okay.

*Sidney Zagri:* And I think this is probably one reason. I think also his associate, Jim Clay here in Washington, who has been working in this overall field, was interested in the topic, and –

*[Crosstalk]*

*Father Hartke:* I wondered if was an employee of the defense for Hoffa. That's –

*Sidney Zagri:* Oh, no, absolutely not.

*Father Hartke:* All right. Fine.

*Sidney Zagri:* As a matter of fact, Mr. Hoffa wouldn't even agree to have it published, although I couldn't stop it if I wanted to, because it was public property.

*Father Hartke:* It's a good book. I read it.

*Sidney Zagri:* Yes.

*Father Hartke:* Good book.

*Sidney Zagri:* But I – before I would lend my support to it being published, I consulted with Mr. Hoffa, because –

*Moderator:* Sidney, let me suggest something. Assuming that –

*David Brinkley:* He refused to use Teamster money to support the book?

*Sidney Zagri:* Absolutely.

*David Brinkley:* But he used Teamster money to pay for his defense?

*Sidney Zagri:* Well, as a matter of fact, as you know, this is not true.

*David Brinkley:* Well, it was.

*[Crosstalk]*

*David Brinkley:* Some of the members stopped it.

*Sidney Zagri:* No. As a matter of fact, under the Landrum-Griffin Law, this is not permissible, and it was a result of two wonderful defense dinners, where people voluntarily shelled out \$100.00 a seat, and –

*David Brinkley:* That was later. That was later.

*Sidney Zagri:* Yeah, but he – as a result, though, I mean, this wonderful outpouring of support, of people, ordinary people, no one –

*Moderator:* Did he use Teamsters funds for his trial?

*Sidney Zagri:* No. No, he couldn't.

*[Crosstalk]*

*Moderator:* At no time?

*David Brinkley:* He was paying Ed Williams with Teamster money.

*Sidney Zagri:* In which trial?

*David Brinkley:* During his –

*Moderator:* A trial.

*David Brinkley:* – appearance before the Senate committee.

*Sidney Zagri:* Oh, that was not a trial. As a matter of fact –

*David Brinkley:* Well, it's sort of splitting hairs.

*Sidney Zagri:* – this – Mr. Hoffa would not be – Mr. Hoffa would – well, and it was a trial, but he would not have been before the Senate committee if he were not president of the Teamsters union. And there was nothing illegal in the Landrum-Griffin Law which would preclude the use of union funds for this purpose.

*David Brinkley:* The Landrum-Griffin Law didn't exist then.

- Sidney Zagri:* Well, there's nothing in the Taft-Hartley –
- David Brinkley:* It was before then.
- Sidney Zagri:* There was nothing in Taft-Hartley –
- David Brinkley:* Well, anyway.
- Sidney Zagri:* As a matter of fact, if it weren't for the fact that he was president of the Teamsters Union, he wouldn't even be before this committee.
- David Brinkley:* Well, he wouldn't have been accused of manipulating the money if he –
- Moderator:* Naturally.
- David Brinkley:* – wasn't the president of the union.
- Sidney Zagri:* What I'm saying is – but it was because Mr. Hoffa represented 1,700,000 members, because he represented a great deal of influence in the community, and because he had developed a Central States agreement which had cost him \$400 million over a three-year period, that considerable pressure was brought to bear to render him less effective. If he weren't so effective on behalf of his membership, I daresay Mr. Hoffa would never have his problems.
- David Brinkley:* Well, that's one I hadn't heard, Sidney. Is that why the McClellan committee was held, because the employers were angry at Hoffa for being an effective union leader?
- Sidney Zagri:* This is part of it, yes.
- David Brinkley:* It is?
- Sidney Zagri:* Yes, indeed. As a matter of fact, I went into this point in great length at the University of Cambridge last March, in England.
- David Brinkley:* A lot of complaint about Hoffa has come from members of the union.
- Sidney Zagri:* Oh, no. As a matter of fact –
- Moderator:* I beg your pardon?
- Sidney Zagri:* Oh, no. Oh, no. You have today out of the 1,700,000 members, the complaints have – as far as I can see, have been concentrated in



one area, and this is an area that Bobby Kennedy fanned and did all he could to nurture in the City of Philadelphia, and he made four trips there in order to get this job done. But outside of that, I challenge anyone to show me where there has been a single defection by a local union or by any individual. I don't know –

*David Brinkley:* Well, right after this hearing in which you said Hoffa was publicly convicted and made into some kind of villain, he was reelected president of the union.

*Sidney Zagri:* Because he was so effective with \_\_\_\_\_ –

*David Brinkley:* So I gather it didn't hurt him very much.

*Sidney Zagri:* Not with his members, no. Because –

*David Brinkley:* Well, how do his members differ from other people, then?

*Sidney Zagri:* For the simple reason they know what the man can do. They know what –

*Moderator:* But they're just average people. Are they really terribly well-informed –

*[Crosstalk]*

*Moderator:* What are these average people you're talking about?

*Sidney Zagri:* I'm talking about the man who's informed through his pocketbook. I'm talking about the man who is making \$3.20 an hour plus fringe benefits. I'm talking about a man who is getting a pension fund –

*Moderator:* And therefore he is informed. Is that your syllogism?

*Sidney Zagri:* I'm saying that he is informed of what this man has been able to deliver. He's informed through the fact that he is enjoying today conditions that he never had prior to Hoffa.

*Moderator:* What kind of a jury member do you suppose he would be, Sidney?

*Sidney Zagri:* Who?

*Moderator:* A union man, a Teamster man?

*Sidney Zagri:* I suppose that he would probably have a predisposition, of course. I would assume that he would have the same predisposition that an

employer representative would have, or the other way. This is something we cannot – we cannot –

*[Crosstalk]*

*Moderator:* Wait a minute. Just a moment.

*Sidney Zagri:* Yes.

*Moderator:* David has something to say.

*David Brinkley:* A favorable predisposition is all right, but an unfavorable predisposition –

*Sidney Zagri:* No, no.

*David Brinkley:* – is not?

*Sidney Zagri:* No, I didn't say that.

*Moderator:* That's what you think, that –

*Sidney Zagri:* No, I'm not saying that. I'm saying that we should –

*[Crosstalk]*

*Sidney Zagri:* I'm saying that we should try to guarantee as high a degree of objectivity as possible.

*Moderator:* Splendid. We all want that.

*Father Hartke:* That's right. Yes.

*David Brinkley:* We're all for that, Sid.

*Sidney Zagri:* And I'm saying that we cannot – we cannot always guarantee this by guaranteeing an individual for his background or 30 or 40 years prior to becoming a juror, but we can, insofar as humanly possible, develop laws which will limit the area of pre-trial publicity. That's all I'm saying.

*David Brinkley:* Well, you haven't yet told us how you're going to do it.

*Moderator:* Nope, you have not.

*David Brinkley:* How you're going to stop prosecutors and defense attorneys from leaking to the press, to the television, or –

*Sidney Zagri:* All right. I was – I started about four times, so let me get to it.

*Moderator:* Sidney, dear, I hate to interrupt you, but I've got –

[Crosstalk]

*Moderator:* David is used to this. One of these days, you're going to –

*David Brinkley:* I think Jimmy Hoffa is going to get off, so you won your battle, I think.

[Crosstalk]

*Moderator:* Father Hartke, this may be another first here in radio. Would you please do a commercial for \_\_\_\_\_?

*Father Hartke:* I'd be glad to \_\_\_\_\_.

*Moderator:* Since you know it so well?

[Commercial]

*Moderator:* David, I'm sure you have a few words here. I'll keep my mouth shut.

*David Brinkley:* Well, Sidney, how are you going to do – how this – we all agree it would be an ideal state. How are you doing to achieve it? The American people have a right to know what is going on down at the courthouse. You cannot keep them in the dark about that. So how are we going to stop the papers and the press and the television –

*Sidney Zagri:* Let me say this, that if we can get –

*David Brinkley:* – from printing news about accused – about defendants in criminal cases?

*Sidney Zagri:* All right. Now I – to start with, I agree with both of you.

*Moderator:* Okay. Answer the question, because we've just got a few minutes.

[Crosstalk]

*Sidney Zagri:* Okay. The answer is the obvious things can be stopped. The more subtle things we cannot stop. The obvious things, for example, the planting of the story by Bobby Kennedy in *Life* magazine, which was part of the public information infamous *Life* memo, when Hank Sudan was called down to the Department of Justice by Bobby Kennedy, told there was a man, Sam Baron, in the back room, who had a wonderful expose on Hoffa, an employee of Hoffa. He then was told –

*David Brinkley:* Is that the man Hoffa beat up?

*Sidney Zagri:* No, this was the man who provoked a quarrel with Hoffa, and according to –

*[Crosstalk]*

*David Brinkley:* There was a fight, though.

*Sidney Zagri:* There was a fight, but there was no follow-up because there was no evidence to support the charges.

*David Brinkley:* Okay. All right.

*Sidney Zagri:* Now – but this is –

*[Crosstalk]*

*Sidney Zagri:* Sam Baron – Sam Baron was – this was part of the conspiracy that I'm referring to.

*Moderator:* Well, hurry up and answer the question that David posed.

*Sidney Zagri:* The question is – the obvious thing, where Kennedy admitted that he was responsible for planting this story prior to the Hoffa trial, this could be prohibited by the Morse Bill.

*Moderator:* Okay.

*Sidney Zagri:* He could not plant a story in advance of the trial.

*Moderator:* Nor could the other side.,

*Sidney Zagri:* That's right.

*Moderator:* You never have planted one.

*Sidney Zagri:* Not that I know of.

*Moderator:* No.

*Sidney Zagri:* Number two, the eight press releases prior to each one of the Hoffa cases would not be permissible, because they would be a form of commenting on matters that are not in evidence.

*[Crosstalk]*

*Sidney Zagri:* These are obvious things that we could take –

*David Brinkley:* \_\_\_\_\_ the newspaper published a lot of stuff about Hoffa's various trials. I seem to remember the Teamsters paper –

*Sidney Zagri:* The Teamsters had a –

*David Brinkley:* Which is all right. I don't –

*Sidney Zagri:* No, no. According to the advice of counsel, we – because we felt there was an important constitutional point here, which we wanted to preserve, we refrained from commenting on matters not in evidence. We felt –

*Moderator:* Oh, you're pure, Sidney. My goodness.

*Sidney Zagri:* Well, this isn't a question of purity. It's a question of practicality. This was according to our lawyer's advice.

*Moderator:* I wish we had more time to talk to Father Hartke and David Brinkley, and Sidney, go ahead with your conversation.

*Sidney Zagri:* So in this area where you have obvious things, like the *Life* memo and the planting of stories by the attorney general through –

*Moderator:* Time memo. We're out of \_\_\_\_\_. Thanks for listening.

*Sidney Zagri:* So are we out of time?

*[End of Audio]*